

In the Matter of License No. 271480 Merchant Mariner's Document No.
Z-319602 and all other Seaman Documents
Issued to: WILLIAM M. HANDLEY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1440

WILLIAM M. HANDLEY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 24 June 1963, an Examiner of the United States Coast Guard at Boston, Massachusetts revoked Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that on 10 May 1959, while serving as First Assistant Engineer on the United States MV THOMAS NELSON under authority of his license as Chief Engineer, Appellant indecently assaulted a girl eight years of age while the ship was in a foreign port; and, on 6 January 1961, Appellant wrongfully falsified the application for renewal of his license by denying having been convicted by any court since the issuance of his license as Chief Engineer.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence several documentary exhibits. It was then stipulated that Appellant and the person convicted in England, as indicated in one of the exhibits, were the same person; an appeal was taken from the conviction; after Appellant was released on bail, he left England and thereby forfeited bail.

Appellant testified that he had admitted molesting sexually the girl in question but stated that such admissions had been made while he was "under pressure". Appellant also testified that he believed the appeal from the conviction was still pending when the hearing commenced on 28 March 1963.

Counsel for Appellant argued that Appellant had not been "convicted" in terms of his license renewal application because the appeal was still pending. It was conceded that there was evidence in support of the specification alleging the indecent assault. The

Examiner found both specifications proved and indicated that the result would be the same if he found only one specification proved. In mitigation, the Examiner received evidence of Appellant's background and a professional psychiatric evaluation of Appellant's

condition. The Examiner then, on 24 June 1963, rendered an oral decision and served a written order on Appellant revoking all his seaman documents. The entire decision was served on 2 July 1963.

FINDINGS OF FACT

On 10 May 1959, Appellant was serving as First Assistant Engineer on the United States MV THOMAS NELSON and acting under authority of his license while the ship was in the port of Glasgow, England.

While ashore on this date, Appellant indecently assaulted a girl who was eight years old. For this offense, Appellant was convicted on his plea of guilty before the Magistrate's Court in the City of Salford, England on 23 June 1959. Appellant was then sentenced to imprisonment for four months. He was released on 100 pounds bail after taking an appeal. Appellant forfeited his bail by leaving the country and not returning at any time after he was convicted. Appellant had told his lawyer in England that he would return within a short time. There is no evidence in the record that the appeal was decided in Appellant's absence or that it is still pending.

At Boston, Massachusetts on 6 January 1961, Appellant filed a written application for the renewal of his license as Chief Engineer and checked "No" as his answer to the question, "Have you ever been convicted by any court (including a military court) for other than minor traffic violations since the issuance of your present grade of license?" The application was signed, and sworn to, by Appellant. As a result of this application, Appellant was issued License No. 271480.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant did not wrongfully falsify his license renewal application because there is no evidence of a "final conviction" as a result of the trial in England because an appeal was taken from the conviction. Improper reference to the details of the conviction prejudiced Appellant in his attempt to convince the Examiner that Appellant believed the appeal was still pending and that he had not been "finally

convicted" when he testified almost four years after the conviction by the Magistrate's Court. As a matter of law, there is no conviction until a final judgment is handed down after an appeal has been taken.

An order of revocation is not warranted or desirable as indicated by the psychiatric of Appellant and related circumstances.

APPEARANCE ON APPEAL: Feeney and Malone of Boston, Massachusetts, by Joseph F. Feeney, Esquire, of Counsel.

OPINION

Appellant's contentions are not convincing on the merits and are not persuasive concerning the suggested modification of the order.

First of all, we are not concerned with what constitutes a "final conviction" in the legal, technical sense, but whether or not Appellant had been "convicted" with the commonly accepted meaning of the word as used on the license renewal application. The word "convicted" is usually understood to indicate that a person has pleaded guilty to an offense or has been found guilty by a jury, either before or after sentencing. 13 Corpus Juris, p. 903. When an appeal is taken, the defendant stands convicted by the action of the court of original jurisdiction pending proceedings in the appellate court and until such time as some contrary action is taken by the appellate court; the latter may affirm the judgment of the lower court as distinguished from the rendering of a new judgment by the appellate court. Schwab v. Berggren (1892), 143 U. S. 442, 451. Appellant had been convicted and the conviction remained outstanding, so far as the record discloses, when he filed his license renewal application. Hence, the application was falsified.

As to whether or not Appellant "wrongfully" and, therefore, knowingly falsified the application, he simply testified that he honestly believed that the appeal was still pending. But he was not asked whether he believed that he had been "convicted" within the meaning of the question on the application form. After forfeiting bail by leaving England approximately a year and a half before making the license application and not having since returned to that country, it is my opinion that there was no reasonable basis for Appellant to believe, and that Appellant did not believe, that as of 6 January he was correct in indicating that he had not been "convicted". In the absence of any evidence to the contrary, the only logical conclusion to be drawn was that the appeal from

the conviction had been dismissed, especially since Appellant had broken his word, to his lawyer in England, that Appellant would return in a short while for the appeal. Consequently, the application not only was "falsified", but this was done "wrongfully" by Appellant. There is nothing in the record, concerning the details of the offense in England, which convinces me that Appellant was prejudiced in his attempt to convince the Examiner that Appellant did not believe he had been convicted.

At the hearing, counsel conceded that there was evidence to support the indecent assault alleged in the other specification and Appellant did not deny it except by implication when he testified that he had admitted it while "under pressure". Therefore, there is no reason to question the Examiner's conclusion that there is no evidence to overcome the record of conviction which constitutes substantial evidence of the offense.

Relative to the evidence submitted in mitigation, particularly the psychiatrist's opinion that Appellant is fit for sea duty, it is noted that the order of revocation was imposed for two serious acts of misconduct and not for incompetence based on a determination that Appellant is not mentally fit for sea duty. I agree with the Examiner that either of these offenses alone would justify the revocation. This is true with respect to the indecent assault because of the very nature of the offense. Concerning the license application falsification, this is so since the disclosure of the conviction would have precluded the issuance of the license to Appellant.

ORDER

The order of the Examiner dated at Boston, Massachusetts, on 24 June 1963, is AFFIRMED.

E. J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D.C., this 14th day of January 1964.